

REMARKS

Reconsideration of the present application is respectfully requested. Claims 18, 19, 22-24 and 26 have been cancelled without prejudice or disclaimer. Claims 1, 6 and 12 have been amended. Claims 1-17, 20, 21 and 25 remain pending in this application.

The present application Serial No. 10/667,952 was filed by the attorneys of record on September 22, 2003, along with application Serial No. 10/668,036, now U.S. Patent No. 6,945,920, entitled "Adjustable Balancing Board", both sharing a common assignee. The '036 application was previously, and the current '952 application is being currently, examined by Examiner Lori Baker Amerson. In the prosecution of the previous '036 application, the Examiner acknowledged the error by the PTO's new application receiving office in switching the drawing figures between the '036 application and the present '952 application. Corrected drawing figures 1-9 were filed in the present '952 application on February 11, 2004.

After reviewing the Examiner's drawing objections in the Office action mailed November 1, 2005, it is believed that the Examiner was viewing the wrong set of drawing figures. Looking at the corrected drawing figures for the present application (FIGS. 1-9, courtesy copy enclosed), the reference numerals 200 and 202 are shown in FIG. 8. Additionally, the other numerals listed by the Examiner (e.g., 27, 74, etc.) are in fact not present in FIGS. 1-9. It is believed that the corrected drawing figures have cleared up any confusion.

With respect to the drawing objection related to reference numeral 24, paragraph 0025 of the specification has been amended to correctly identify the footings 24. Support for this amendment is found in other portions of the specification where the footings 24 are described, and in FIG. 4 where the bracing ribs 34 are shown to extend proximal to the opposed footings 24.

It is respectfully submitted that no new matter has been added with this amendment to the specification.

Turning to the claims, amendments have been made to claims 1, 6 and 12 to correct various informalities, including problems with antecedent basis. Additionally, independent claim 12 has been amended to incorporate the limitations of objected to but otherwise held allowable claim 18, as will be further explained below.

Claims 1, 5, 8-14, 17, 20-21 and 25-26, were rejected under 35 U.S.C. 102(b) as being anticipated by England (U.S. 3,895,794). The England patent discloses a balancing board device employing a fulcruming roller 12 for contacting a surface that is confined within a cavity formed by a protuberant center portion 14 of a non-linear balancing board 13. The roller 12 contacts a concave undersurface 17 of the board 13 and provides a pivot point about which a user must balance as they stand on foot positioning trenches 16 disposed at opposite longitudinal ends of the center portion 14 of the board 13.

Because the England patent is directed to a pivoting balancing board, not stationary balancing objects as in the present application, and due to the confusion over the drawing figures, the Applicant believes that the Examiner may have been looking at the drawings of the '036 Application in citing this particular reference. In any case, the England patent does not disclose the device of pending independent claims 1, 12 or 25 of the present application.

Among other things, amended claim 1 requires an arcuate roof extending upwardly from opposed footings to an apex and having opposed lateral side regions, as well as a pair of sidewalls extending downwardly from the lateral side regions of the arcuate roof and being formed with a concave profile such that the sidewalls extend laterally towards one another.

(See *e.g.*, FIG. 3, present application). With the England patent, the balancing board 13 has a roof 14 and sidewalls 18. However, the sidewalls are flat, planar members, and are not formed with a concave profile that would cause such sidewalls to curve inwardly towards one another. The sidewalls 18 of the invention of the England patent are necessarily flat in order to properly contain the cylindrical roller fulcrum 12 and direct its motion longitudinally along the underside 19 of the protuberant center portion 14 of the of the balancing board 13, as clearly seen in FIG. 3.

As such, the England patent does not disclose or suggest a balancing device with sidewalls having a concave profile, and therefore does not anticipate independent claim 1. Accordingly, withdrawal of the rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by England is respectfully requested. Claims 5 and 8-11 depend either directly or indirectly from claim 1, and include all of the limitations of claim 1. Therefore, as claim 1 is now believed to be allowable over England, claims 5 and 8-11 are also allowable, and withdrawal of the rejection of claims 5 and 8-11 under 35 U.S.C. 102(b) as being anticipated by England is respectfully requested.

With respect to the rejection of independent claim 12 under 35 U.S.C. 102(b) as being anticipated by England, this claim has now been amended to include all of the limitations of dependent claim 18, which was objected to but otherwise held allowable if rewritten to include all base claim and intervening claim limitations. Therefore, it is believed that claim 12 is in allowable form, and withdrawal of the rejection of claim 12 under 35 U.S.C. 102(b) as being anticipated by England is respectfully requested. Claims 13, 14, 20 and 21 depend either directly or indirectly from claim 12, and include all of the limitations of claim 12. Therefore, as claim 12 is now believed to be allowable over England, claims 13, 14, 20 and 21 are also allowable, and

withdrawal of the rejection of claims 13, 14, 20 and 21 under 35 U.S.C. 102(b) as being anticipated by England is respectfully requested.

With respect to the rejection of independent claim 25 under 35 U.S.C. 102(b) as being anticipated by England, claim 25 requires, among other things, an arcuate roof extending upwardly from opposed footings to an apex and having opposed lateral side regions, as well as a pair of sidewalls extending downwardly from the lateral side regions of the arcuate roof wherein the inner and outer surfaces of the sidewalls have embosses and debosses configured to matingly receive the corresponding feature of another balancing device for securing a pair of balancing devices together. (See *e.g.*, FIGS. 5-7, present application). The England patent does not disclose or suggest such a feature. There are no embosses or debosses disposed on the sidewalls 18 for securing multiple balancing boards together. The claimed limitation is wholly absent in the England patent.

As such, the England patent does not anticipate independent claim 25. Accordingly, withdrawal of the rejection of claim 25 under 35 U.S.C. 102(b) as being anticipated by England is respectfully requested.

Claims 2, 4, 15 and 22-24 were rejected under 35 U.S.C. 103(a) as being unpatentable over the England patent as applied to claim 1, and further in view of the Larson patent. Claims 22-24 have now been cancelled, and the rejection of these claims is considered moot. Claims 2 and 4 depend either directly or indirectly from independent claim 1, and include all of the limitations of claim 1. Claim 15 depends either directly or indirectly from independent claim 12, and includes all of the limitations of claim 12 (which itself now includes the limitations of objected to but otherwise held allowable claim 18). Both claims 1 and 12 are believed to be allowable for the reasons stated above, and therefore claims 2, 4 and 15 are also allowable.

Furthermore, Larson does not supply the teachings missing in the England patent with respect to the rejection of claim 1; namely, a balancing device of the type claimed with sidewalls having a concave profile. Withdrawal of the rejection of claims 2, 4 and 15 under 35 U.S.C. 103(a) as being unpatentable over the England patent in view of the Larson patent is respectfully requested.

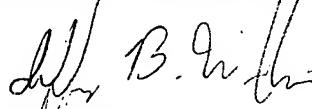
Claims 3 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over the England patent as applied to claims 1 and 15, and further in view of the Yeh patent. Claim 3 depends either directly or indirectly from independent claim 1, and include all of the limitations of claim 1. Claim 16 depends either directly or indirectly from independent claim 12, and includes all of the limitations of claim 12 (which itself now includes the limitations of objected to, but otherwise held allowable, claim 18). Both claims 1 and 12 are believed to be allowable for the reasons stated above, and therefore claims 3 and 16 are also allowable. Furthermore, Yeh does not supply the teachings missing in the England patent with respect to the rejection of claim 1; namely, a balancing device with sidewalls having a concave profile. Withdrawal of the rejection of claims 3 and 16 under 35 U.S.C. 103(a) as being unpatentable over the England patent in view of the Yeh patent is respectfully requested.

Claims 6 and 7 were objected to as being dependent upon a rejected base claim, but otherwise allowable if rewritten to include all base claim and intervening claim limitations. Claims 6 and 7 depend either directly or indirectly from claim 1, which is now believe to be allowable over the references of record. Therefore, it is respectfully requested that claims 6 and 7 be found allowable in current claim form.

Based on the foregoing, it is submitted that the Applicant's invention as defined by claims 1-17, 20, 21 and 25 is patentable over the references of record. Issuance of a Notice of Allowance is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees that may be required, or credit any overpayment, to Deposit Account No. 19-2112.

Respectfully submitted,



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